

**BEFORE THE FRESHWATER HEARING PANEL CONVENED BY
THE CHIEF FRESHWATER COMMISSIONER**

IN THE MATTER

of the Proposed Otago Regional Policy
Statement 2021

MEMORANDUM on behalf of the WISE RESPONSE SOCIETY INC

31 May, 2022

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MAY IT PLEASE THE COMMISSIONERS

1. Our Wise Response Society Inc is a submitter to the Proposed Regional Policy Statement for Otago (pORPS).
2. This memorandum is in response to the Commissioners' invitation in Minute 3 to parties to seek more formal direction as to the prehearing process.
3. Paragraph 15 in Minute 3 issued on the 14 April states: *We **direct** also that parties make use of the extra time created by the delay, to engage in meaningful negotiations or other alternative dispute resolution to settle or at least narrow matters in dispute. We ask the council to lead that process. If any parties seek a more formal approach to ADR or conferences of experts, they have leave to approach the panel for directions. We hope however that responsible counsel and parties can move into this area without the need for formal direction.*

Matters arising

4. Commissioners' direction appears to be entirely consistent with the kind of pre-hearing Alternative Disputes Resolution (ADR) negotiations that Wise Response requested in its Memo to the Commissioners of 4 April.
5. As we had still not heard what the Council's prehearing plan was and whether we needed to seek more direction from the Commissioners, we wrote to the Council on the 14 of May to ask when it would be available. As the matters core to achieving "common ground" underlie the specificities of the RPS, and as all parties have already established positions on various policies, we proposed that seeking common ground could be undertaken in parallel with the development of the s42A report. We also identified an independent organization who specializes in such ADR at the appropriate level and could undertake the step for them.
6. In an email response dated 16 May, the Council included the statement "But as you note below, the nature of the issues you wish to discuss, do not directly relate to the structure and content set out in the s.42A reports, which our approach will focus on. On that basis I appreciate the heads up that you intend to revert to the Court to seek direction for a more formal approach..."

7. The Proposed prehearing consultation outline was received on the 20 May. Over a month of possible consultation time had passed since the Commissioners directive. Appendix A contains the proposal.
8. Consistent with the Council's statement of the 16 May, the prehearing process outline does not appear to us to accommodate the step we sought the Commissioners endorsement for in our Memo to you of April 4.

Our position

9. The matters that we have submitted on and which are in dispute, have their source in what we consider are mistaken assumptions about the state of our resources, life support systems and the implications of continuing a largely Business-As-Usual trajectory.
10. We have submitted specifically on this issue and its implications at various places in our submission to the RPS of 14 September 2021. In our proposal for the introduction to the RPS, we attempt to set a more realistic context to the RPS. The process we proposed in our Memo to you of April 4 would give the opportunity to support that position.
11. We submit that unless the assumptions and policies in the RPS are based on realistic assessment of our situation at all levels, it is highly likely that many of the policies will end up being out of step with the rapidly evolving circumstances. Without such a baseline, we consider it will not be possible to achieve the purpose of the Act.
12. Further, the extent to which agreement on these underling principles can be achieved will translate directly into our capacity to narrow matters in dispute for the hearing. Indeed, without such a meaningful conversation, deep divisions will persist.

Decision requested

13. What is crucial for us is the opportunity to discuss with other parties before the hearing, the deeper issues and drivers and seek greater common understanding. We interpreted the courts directive in Para 15 of Minute 3 as inviting the ORC to arrange such a conversation.
14. **We therefore respectfully ask that the Commissioners clarify to the ORC that it needs to make sufficient and appropriate provision in the prehearing process for issues raised in our submission on the context for and assumptions behind the RPS – which**

have implications for many of the objectives and policies in the Statement – to be properly assessed as a sound basis to meaningful negotiations.

15. Essentially, the assumptions of all parties need to be understood and tested in relation to wider environmental imperatives and the economic and social implications.

16. We see this as an opportunity to try a novel approach to ADR that, if successful, could be utilised in similar situations in other settings.

Appendix A: Letter from ORC outlining their proposed Pre-consultation process

Dear Parties,

You are receiving this email because you have submitted on the proposed Otago Regional Policy Statement.

Proposed Otago Regional Policy Statement 2021 – Pre-Hearing Consultation

In its minute of 14 April 2022, the Hearings Panel directed a delayed timetable for the preparation and filing of evidence, and commencement of hearings. The Panel also directed that parties make use of the extra time created by the delay to engage in meaningful negotiations to settle or at least narrow matters in dispute. To that end the Council proposes a series of topic based facilitated meetings.

These meetings are to provide an initial opportunity to clarify positions, narrow differences and, in some instances, resolve points raised by submissions. The meetings will be conducted on a without prejudice basis to enable free and frank discussion. Any agreements reached will be recorded in writing, signed, reported to the Panel, and posted on the hearing's website.

If you wish to participate, then please go to the form here at the following link and fill in the appropriate topic boxes and submit the form before 5pm on Friday 27 May 2022. <https://form.jotform.com/221377895812062>

The topics are:

Report	Topic
1	Introduction and common theme
2	Submissions on Part 1
3	Interpretation
4	MW – Mana whenua

5a	SRMR
5b	RMIA
6	IM – Integrated management
7	AIR – Air
8	CE – Coastal environment
9a	LF-WAI – Te Mana o te Wai
9b	LF-VM – Visions and management
9c	LF-FW – Freshwater
9d	LF-LS – Land and soils
10	ECO – Ecosystems and indigenous biodiversity
11a	EIT-EN – Energy
11b	EIT-INF – Infrastructure
11c	EIT-TRAN – Transport
12a	HAZ-NH – Natural hazards
12b	HAZ-CL – Contaminated land
13a	HCV-WT – Wāhi tūpuna
13b	HCV-HH – Historic heritage
14	NFL – Natural features and landscapes
15	UFD – Urban form and development
16	EMON – Evaluation and monitoring

Please note that you may only join meetings on topics you submitted on.

Taking account of which submitters elect to participate in discussion on each topic, the Council will then set a timetable for meetings. It is expected that meetings will occur during the period between 13 June 2022 and 1 July 2022. It is anticipated that there will be further discussions between the Council and submitters as the hearing process unfolds.

Referencing Update to Section 42A Chapter 11

Could you also note that the Section 42A Chapter 11 on the website has had an update to address a sequencing error in some paragraph and chapter numbers. There have been no amendments to the text of the Section 42A Chapter 11.